IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION NO. 3:93-CR-28-1H

KENNETH KUBINSKI,)	
Petitioner,)	
)	
V.)	ORDER
UNITED STATES OF AMERICA,))	
Respondent.))	

This matter is before the court on petitioner's pro se motion for relief from judgment pursuant to Federal Rule of Criminal Procedure 35(a).

Petitioner was indicted, along with six co-defendants, in a 1993 superseding indictment for conspiracy to traffic drugs, engaging in a criminal enterprise, conspiracy to import illegal drugs, multiple counts of money laundering, drug trafficking, and one count of criminal forfeiture. In June 1994, petitioner was convicted by a jury on all counts. This court sentenced petitioner on November 15, 1994 to four life sentences, 20 years on the money laundering convictions and 40 years on the trafficking and possession convictions, all to be served concurrently. The Fourth Circuit affirmed his convictions and

sentence on appeal in July 1996. <u>United States v. Kubinski</u>, No. 94-5887, 1996 WL 386612 (4th Cir. July 11, 1996). On December 10, 1997, petitioner filed a motion to vacate pursuant to 28 U.S.C. § 2255 raising eight grounds for relief. On July 1, 1999, this court granted the motion in part by vacating the conviction and sentence on Count I, and dismissed the remaining claims for failure to state a claim upon which relief can be granted. <u>See</u> Fed. R. Civ. P. 12(b)(6). A certificate of appealability was denied on June 28, 2001.

Petitioner has attempted to have this court review his sentence via several procedural avenues over the years. A review of petitioner's latest motion reveals no legal basis for a change in his sentence or a re-opening of his judgment. Rule 35(a) of the Federal Rules of Criminal Procedure provides "[w]ithin 14 days after sentencing, the court may correct a sentence that resulted from arithmetical, technical, or other clear error." Fed R. Crim. P. 35(a). This rule has no application to petitioner's case.

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Finding no authority to reduce his sentence or re-open his judgment, the court DENIES petitioner's motion [DE #52].

This 3 day of April 2013.

Malcolm J. Howard

Senior United States District Judge

At Greenville, NC #26